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**Subject: Comments to Preliminary Draft CEQA Guideline Amendments due 1/26/2009**

## PROPOSED AMENDMENTS TO 14 SECTIONS OF THE CEQA GUIDELINES

DRAFT (new language in capital letters)

15064 Determining the Significance of the Environmental Effects Caused by a Project  
(h)(3) A lead agency may determine that a projects' incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program

(EG WATER QUALITY CONTROL PLAN  
AIR QUALITY ATTAINMENT OR MAINTENANCE PLAN  
INTEGRATED WASTE MANAGEMENT PLAN  
CITY OR COUNTY GENERAL PLAN OR SPECIFIC PLAN  
REGIONAL HOUSING ALLOCATION PLAN  
HABITAT CONSERVATION PLAN  
NATURAL COMMUNITY CONSERVATION PLAN  
CLIMATE ACTION PLAN  
REGIONAL TRANSPORTATION PLAN  
REGIONAL BLUEPRINT PLAN  
SUSTAINABLE COMMUNITY STRATEGY  
STATEWIDE PLAN FOR MITIGATION OF GREENHOUSE GAS EMISSIONS

which provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.

### COMMENTS:

The public agencies, in the case of cities, do not necessarily adopt a plan but enjoin in a Memorandum of Understanding MOU. Jurisdiction in these MOUs are not necessarily given to the public agency as a lead agency, but to another entity, which may not have control of local (land) issue decisions. These new regional plans IE Integrated Regional Water Management

Plan IRWMP are controlled by agencies or departments, not required by law, to go through the public process or adopt a plan. The Brown Act or public comment may not even be required by law. It may be void from the Public Process.

Elements of the General Plan may be outdated. Yearly reports may not be prepared, consequently plans become outdated and can age 30 years or more. That 30-year old plan may have been adopted by the Public Agency, but nothing is current or even real.

The Housing Element remains updated, by law, but not the other aspects of the General Plan.

So does an old plan, though approved by the Public Agency, remain in effect, when it is ineffectual?

DRAFT:

#### 15064.4 DETERMINING THE SIGNIFICANCE OF IMPACTS FROM GREENHOUSE GAS EMISSIONS

(A) A LEAD AGENCY SHOULD CONSIDER THE FOLLOWING, WHERE APPLICABLE, IN ASSESSING THE SIGNIFICANCE OF IMPACTS FROM GREENHOUSE GAS EMISSIONS, IF ANY, ON THE ENVIRONMENT:

(1) THE EXTENT TO WHICH THE PROJECT COULD HELP OR HINDER ATTAINMENT OF THE STATE'S GOALS OF REDUCING GREENHOUSE GAS EMISSIONS TO 1990 LEVELS BY THE YEAR 2020 AS STATED IN THE GLOBAL WARMING SOLUTIONS ACT OF 2006. A PROJECT MAY BE CONSIDERED TO HELP ATTAINMENT OF THE STATE'S GOALS BY BEING CONSISTENT WITH AN ADOPTED STATEWIDE 2020 GREENHOUSE GAS EMISSIONS LIMIT OR THE PLANS, PROGRAMS, AND REGULATIONS ADOPTED TO IMPLEMENT THE GLOBAL WARMING SOLUTIONS ACT OF 2006:

COMMENTS:

Where the effect of Climate Change migration into the state from does projects outside the state or country count in reducing the emissions? Example, oil mining from shale produces emissions that migrate from Canada to the US and down through weather patterns. Are weather patterns considered in this goal and attainment planning?

DRAFT:

(20) THE EXTENT TO WHICH THE PROJECT MAY INCREASE THE CONSUMPTION OF FUELS OR OTHER ENERGY RESOURCES, ESPECIALLY FOSSIL FUELS THAT CONTRIBUTE TO GREENHOUSE GAS EMISSIONS WHEN CONSUMED:

COMMENTS:

How are you defining GEOTHERMAL in this section?

DRAFT:

(3) THE EXTENT TO WHICH THE PROJECT MAY RESULT IN INCREASED ENERGY EFFICIENCY OF AND A REDUCTION IN OVERALL GREENHOUSE GAS EMISSIONS FROM AN EXISTING FACILITY:

COMMENTS:

How are you treating oil wells, as an existing facility, in terms of geothermal?

DRAFT:

(4) THE EXTENT TO WHICH THE PROJECT IMPACTS OR EMISSIONS EXCEED ANY THRESHOLD OF SIGNIFICANCE THAT APPLIES TO THE PROJECT.

COMMENTS:

What regulations AND enforcement issues are being considered in this statement without a law requiring some scientific basis of impact, and with some regularity?

DRAFT:

(B) A LEAD AGENCY SHOULD MAKE A GOOD-FAITH EFFORT, BASED ON AVAILABLE INFORMATION, TO DESCRIBE, CALCULATE OR ESTIMATE THE AMOUNT OF GREENHOUSE GAS EMISSIONS ASSOCIATED WITH A PROJECT, INCLUDING EMISSIONS ASSOCIATED WITH ENERGY CONSUMPTION AND VEHICULAR TRAFFIC. BECAUSE THE METHODOLOGIES FOR PERFORMING THIS ASSESSMENT ARE ANTICIPATED TO EVOLVE OVER TIME, A LEAD AGENCY SHALL HAVE DISCRETION TO DETERMINE, IN THE CONTEXT OF A PARTICULAR PROJECT WHETHER TO:

COMMENTS:

This basically means all rules are out. When does an agency do “good-faith” without a lawsuit? There must be requirements for timely reports and current scientific data. Again, “discretion” is too loose and the public must be protected. There is an environmental justice issue here, when only lawsuits determine outcomes.

DRAFT:

(1) USE A MODEL OR METHODOLOGY TO QUANTIFY GREENHOUSE GAS EMISSIONS ASSOCIATED WITH A PROJECT, AND WHICH OF ANY AVAILABLE MODEL OR METHODOLOGY TO USE. THE LEAD AGENCY MAY INCLUDE A

QUALITATIVE DISCUSSION OR ANALYSIS REGARDING THE LIMITATIONS OF THE PARTICULAR MODEL OR METHODOLOGY SELECTED FOR USE.

(2) RELY ON QUALITATIVE OR OTHER PERFORMANCE BASED STANDARDS FOR ESTIMATING THE SIGNIFICANCE OF GREENHOUSE GAS EMISSIONS.

COMMENTS:

Way to much wiggle room. The science needs to be defined.

DRAFT:

15064.7 THRESHOLDS OF SIGNIFICANCE.

(C) WHEN ADOPTING THRESHOLDS OF SIGNIFICANCE, A LEAD AGENCY MAY CONSIDER THRESHOLDS OF SIGNIFICANCE ADOPTED BY OTHER PUBLIC AGENCIES AND RECOMMENDATIONS OF OTHERS, PROVIDED SUCH THRESHOLDS OR RECOMMENDATIONS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, INCLUDING EXPERT OPINION BASED ON FACTS.

COMMENTS:

Realistically, does an agency listen to expert opinion from the opposition or expert opinion from their side? Who determines, in a Lead Agency, what is considered “fact?” Is it the results of a lawsuit, scientific paper, scientific experiment and/or report, years of experience?

DRAFT:

15126.4 CONSIDERATION AND DISCUSSION OF MITIGATION MEASURES PROPOSED TO MINIMIZE SIGNIFICANT EFFECTS.

(C) MITIGATION MEASURES RELATED TO GREENHOUSE GAS EMISSIONS

(1) LEAD AGENCIES SHOULD CONSIDER ALL FEASIBLE MEANS OF MITIGATING GREENHOUSE GAS EMISSIONS INCLUDING BUT NOT LIMITED TO EMISSIONS ASSOCIATED WITH THE PROJECT’S ENERGY CONSUMPTION, INCLUDING FOSSIL FUEL CONSUMPTION.

(2) MITIGATION MEASURES MAY INCLUDE PROJECT FEATURES, PROJECT DESIGN, OR OTHER MEASURES WHICH ARE INCORPORATED INTO THE PROJECT TO SUBSTANTIALLY REDUCE ENERGY CONSUMPTION OR GREENHOUSE GAS EMISSIONS.

(3) MITIGATION MEASURES MAY INCLUDE, WHERE RELEVANT, COMPLIANCE WITH THE REQUIREMENTS IN A PREVIOUSLY APPROVED PLAN OR MITIGATION PROGRAM FOR THE REDUCTION OR SEQUESTRATION OF GREENHOUSE GAS

EMISSIONS, WHICH PLAN OR PROGRAM PROVIDES SPECIFIC REQUIREMENTS THAT WILL AVOID OR SUBSTANTIALLY LESSEN THE POTENTIAL IMPACTS OF THE PROJECT.

(4) MITIGATION MEASURES MAY INCLUDE MEASURES THAT SEQUESTER CARBON OR CARBON-EQUIVALENT EMISSIONS.

(5) WHERE MITIGATION MEASURES ARE PROPOSED FOR REDUCTION OF GREENHOUSE GAS EMISSIONS THROUGH OFF-SITE MEASURES OR PURCHASE OF CARBON OFFSETS, THESE MITIGATION MEASURES MUST BE PART OF A REASONABLE PLAN OF MITIGATION THAT THE RELEVANT AGENCY COMMITS ITSELF TO IMPLEMENTING.

#### COMMENTS:

How is energy consumption being defined from the source? Is the coal baseline basis used? Is the solar energy transmitting basis used? Is the geothermal baseline basis used? Is nuclear used? Are transmission lines required over large distances outside the project area? How are the mitigations being defined to a single project? What is a “previously approved plan or mitigation program?” Is it an energy supplier’s plan or mitigation program approved by a commission? Does this “approval” fall under this jurisdiction?

Why is cap-and-trade being included here when it is improper? Why include a financial market mechanism in a CEQA process? This negates any attempt to mitigate. How are offsite measures contributing?

#### DRAFT:

#### 15130. DISCUSSION OF CUMULATIVE IMPACTS

(B) A summary of projections contained in an adopted LOCAL OR REGIONAL PLAN FOR WHICH AN EIR HAS BEEN CERTIFIED AND THAT DESCRIBES OR EVALUATES CONDITIONS CONTRIBUTING TO THE CUMULATIVE EFFECT. THIS MAY INCLUDE: A GENERAL PLAN, REGIONAL TRANSPORTATION PLAN, REGIONAL BLUEPRINT PLAN, CLIMATE ACTION PLAN, OR REGIONAL HOUSING ALLOCATION PLAN. IT MAY ALSO INCLUDE AN ADOPTED OR CERTIFIED PRIOR ENVIRONMENTAL DOCUMENT FOR SUCH A PLAN, OR A REGIONAL COMPUTER MODELING PROGRAM REFLECTING THE MOST ACCURATE AND REASONABLY AVAILABLE INFORMATION. Any such document shall be reference and made available to the public at a location specified by the lead agency.

#### COMMENTS:

Where is water supply, water quality and water management? Will these plans be updated regularly to be reflective of factual information and planning based on accurate assessments?

DRAFT:

(d) Previously approved land use documents such as general plans, specific plans, REGIONAL TRANSPORTATION PLANS, REGIONAL BLUEPRINT PLANS, CLIMATE CHANGE ACTION PLANS, SUSTAINABLE COMMUNITY STRATEGIES, and local coastal plans may be used in cumulative impact analysis. A pertinent discussion of cumulative impacts contained in one or more of the previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs. No further cumulative impacts analysis is required when a project is consistent with a general, specific, master or comparable programmatic plan where the lead agency determines that the regional or areawide cumulative impacts of the proposed project have already been adequately addressed, as defined in section 15152(f), in a certified EIR for that plan.

#### COMMENTS

Is methane mitigation plans considered approved land use documents? What about regional water issues in Integrated Regional Water Management Plans? How are ecosystems contained in approved land use documents? Where do local land use requirements of the elements of the General Plan come into this category? Is the Lead Agency the one required for the “previously approved?”

DRAFT:

(F) AN EIR SHOULD EVALUATE GREENHOUSE GAS EMISSIONS ASSOCIATED WITH A PROPOSED PROJECT WHEN THOSE EMISSIONS, WHEN VIEWED IN CONNECTION WITH THE EFFECTS OF PAST PROJECTS, THE EFFECTS OF OTHER CURRENT PROJECTS, AND THE EFFECTS OF PROBABLE FUTURE PROJECTS, MAY RESULT IN A CUMULATIVELY CONSIDERABLE IMPACT TO THE ENVIRONMENT THAT CANNOT BE MITIGATED TO A LEVEL OF LESS THAN SIGNIFICANT.

#### COMMENTS:

This is too loose a statement. How does one determine levels of less than significant—by science, by a report, by a policy, by a supervisor, by omission? Any project could have a level of less than significant if not tied into current plans, projections, estimates, growth, infrastructure planning and energy planning and reliability.

DRAFT:

#### 15150. INCORPORATION BY REFERENCE

(4) A DESCRIPTION OF THE EFFECTS OF GREENHOUSE GAS EMISSIONS ON THE ENVIRONMENT.

#### COMMENTS:

Is the environment under the control of the Lead Agency, under the jurisdiction of the State of California , under a regional jurisdiction, or cross-jurisdictions? Can a lead agency determine the migrations of greenhouse gas emissions?

DRAFT:

#### 15152. TIERING

(I) PROJECT LEVEL CEQA DOCUMENTS NEED NOT PROVIDE ADDITIONAL PROJECT-LEVEL GREENHOUSE GAS EMISSIONS ANALYSIS OR MITIGATION MEASURES, IF THE PROPOSED PROJECT IS CONSISTENT WITH AN APPLICABLE REGIONAL OR LOCAL PLAN THAT ADEQUATELY ADDRESSES GREENHOUSE GAS EMISSIONS, AND THE PLAN IS ONE FOR WHICH AN EIR HAS PREVIOUSLY BEEN CERTIFIED. (SEE ALSO SECTION 15183.)

COMMENTS:

Why allow programmatic EIRs to stand as adequate?

DRAFT:

#### 15183. PROJECTS CONSISTENT WITH A COMMUNITY PLAN OR ZONING

(8) REQUIREMENTS FOR REDUCING GREENHOUSE GAS EMISSIONS, AS SET FORTH IN AN ADOPTED LAND USE PLAN, POLICY OR REGULATION.

Nothing is addressed here that maintains that an adopted land use plan, policy or regulation be current. A land use plan, without proper reporting and forecast estimates can become obsolete. Sometimes, the plan is obsolete just from omission.

Where is maintenance required? Why is due diligence not used?

DRAFT:

#### 15364.5. Greenhouse Gas (Definition)

“GREENHOUSE GAS” OR “GREENHOUSE GASES” INCLUDES ALL OF THE FOLLOWING GASES: CARBON DIOXIDE, METHANE, NITROUS OXIDE, HYDROFLUOROCARBONS, PERFLUOROCARBONS AND SULFUR HEXAFLUORIDE. (REFERENCE: HEALTH AND SAFETY CODE SECTION 38505(G).)

COMMENTS:

Do any of the plans mentioned throughout this draft refer to ALL greenhouse gases, or to only some and by the choice of what agency?

The word MAY negates the word SHOULD. Which is it throughout this document?

Why is the terms seismic or seismic activity omitted in discussion of greenhouse gases?

## PROPOSED AMENDMENTS TO APPENDIX F

DRAFT:

### II. EIR CONTENTS

Potentially significant energy implications of a project SHALL be considered in an EIR TO THE EXTENT RELEVANT AND APPLICABLE TO THE PROJECT. The following list of energy impact possibilities and potential conservation measures is designed to assist in the preparation of an EIR. In many instances, specific items may not apply or additional items may be needed. WHERE ITEMS LISTED BELOW ARE APPLICABLE OR RELEVANT TO THE PROJECT, THEY SHOULD BE CONSIDERED IN THE EIR.

COMMENTS:

Who determines applicability or relevancy? Is this on the backs of the public via the fiduciary system? Where is environmental justice here?

## PROPOSED AMENDMENTS TO APPENDIX G

DRAFT:

### ENVIRONMENTAL CHECKLIST FORM

NOTE: LEAD AGENCIES ARE CAUTIONED THAT THE FOLLOWING IS A SAMPLE FORM AND MAY BE TAILORED TO SATISFY INDIVIDUAL AGENCIES' NEEDS. IT MAY BE USED TO MEET THE REQUIREMENTS FOR AN INITIAL STUDY WHEN THE CRITERIA SET FORTH IN THE CEQA GUIDELINES HAVE BEEN MET. IT IS THE LEAD AGENCY'S RESPONSIBILITY TO DETERMINE WHETHER THIS SAMPLE FORM ADEQUATELY IDENTIFIES ALL ENVIRONMENTAL ISSUES RELEVANT TO THE PROPOSED PROJECT AND THE PROJECT SETTING. THE SAMPLE QUESTIONS IN THIS FORM ARE INTENDED TO ENCOURAGE THOUGHTFUL ASSESSMENT OF IMPACTS, AND DO NOT NECESSARILY REPRESENT THRESHOLDS OF SIGNIFICANCE.

COMMENTS:

What if the land in an area was drilled, as in oil wells? Is it the prerogative of the Lead Agency to tailor questions that avoid issues such as methane gas mitigation and abandonment of old oil wells?

DRAFT:



## SAMPLE QUESTIONS

II. AGRICULTURE AND FOREST RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. IN DETERMINING WHETHER IMPACTS TO FOREST RESOURCES, INCLUDING TIMBERLAND, ARE SIGNIFICANT ENVIRONMENTAL EFFECTS, LEAD AGENCIES MAY REFER TO INFORMATION COMPILED BY THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION REGARDING THE STATE'S INVENTORY OF FOREST LAND, INCLUDING THE FOREST AND RANGE ASSESSMENT PROJECT AND THE FOREST LEGACY ASSESSMENT PROJECT; AND THE FOREST CARBON MEASUREMENT METHODOLOGY PROVIDED IN THE FOREST PROTOCOLS ADOPTED BY THE CALIFORNIA AIR RESOURCES BOARD.

Would the project:

C) CONFLICT WITH EXISTING ZONING FOR, OR CAUSE REZONING OF, FOREST LAND (AS DEFINED IN PUBLIC RESOURCES CODE SECTION 12220(G)) OR TIMBERLAND (AS DEFINED IN PUBLIC RESOURCES CODE SECTION 4526)?

D) RESULT IN THE LOSS OF FOREST LAND OR CONVERSION OF FOREST LAND TO NON-FOREST USE?

E) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use OR CONVERSION OF FOREST LAND TO NON-FOREST USE?

### COMMENTS:

Will Lead Agencies recognize the value of maintenance of forests in relationship to the Greenhouse Gas Emission in cities?

Missing is the relationship of the ocean waters to the Greenhouse Gas Emission levels.